

No. 12155

United States
Court of Appeals

for the Ninth Circuit

FILIPINO FEDERATION OF AMERICA,
INCORPORATED,

Appellant,

vs.

STANLEY NICHOLSON, a minor, by EDWARD
J. NICHOLSON, next friend and guardian ad
litem,

Appellee.

Transcript of Record

Appeal from the Supreme Court for the
Territory of Hawaii

FILED

MAR 28 1949

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

ARTHUR K. TRASK, Esq.,
P. O. Box 2783,
1042 Smith Street,
Honolulu, T. H.,

Attorney for Plaintiff in Error.

SHIRO KASHIWA, Esq.,
307 Hawaiian Trust Building,
Honolulu 48, T. H.,

Attorney for Defendant in Error. [1 *]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii

L. No. 16344

STANLEY NICHOLSON, a minor, by EDWARD
J. NICHOLSON, next friend and guardian ad
litem,

Plaintiff,

vs.

FILIPINO FEDERATION OF AMERICA, IN-
CORPORATED, a foreign corporation, doing
business in the Territory of Hawaii,

Defendant.

Tort for Damages

JUDGMENT

Pursuant to the decision of the above-entitled
Court rendered and filed on July 13, 1948,

It Is Hereby Ordered, Adjudged and Decreed
that the Plaintiff do have and recover from the
Defendant the sum of Nine Thousand Six Hundred
Twelve and 70/100 Dollars (\$9,612.70) together
with the sum of \$100.00, allowed as costs to the
Plaintiff, or a total of \$9,712.70.

Dated at Honolulu, T. H., July 29, 1948.

(Seal) /s/ GEORGE KAHOIWAI,
Clerk, Circuit Court of First Judicial Circuit,
Territory of Hawaii.

[Endorsed]: Filed July 29, 1948. [4]

In the Supreme Court of the Territory of Hawaii

No. 2741

STANLEY NICHOLSON, a minor, by EDWARD
J. NICHOLSON, next friend and guardian ad
litem,

Plaintiff-Defendant in Error,

vs.

FILIPINO FEDERATION OF AMERICA, IN-
CORPORATED, a foreign corporation, doing
business in the Territory of Hawaii,

Defendant-Plaintiff in Error.

Writ of Error from First Circuit Court, Honor-
able J. A. Matthewman, Judge Presiding, Law
No. 16344.

WRIT OF ERROR

Territory of Hawaii:

To the Clerk of the Circuit Court of the First
Judicial Circuit, Territory of Hawaii:

Application having been made on behalf of Fili-
pino Federation of America, Incorporated, Defend-
ant-Plaintiff in Error above-named, for a Writ of
Error in the above-entitled cause, you are com-
manded forthwith to send to the Supreme Court
the record in said cause.

Witness The Honorable Samuel B. Kemp, Chief
Justice of the Supreme Court of the Territory of
Hawaii, this 27th day of October, 1948.

(Seal)

/s/ LEOTI V. KRONE,

Clerk of the Supreme Court.

[Endorsed]: Filed Oct. 27, 1948. [6]

[Title of Supreme Court and Cause.]

RETURN TO WRIT OF ERROR

To the Clerk of the Supreme Court of the Territory
of Hawaii:

The execution of the within writ of error appears
by the record hereto annexed.

Dated at Honolulu, T. H., this day
of October, 1948.

.....,
Clerk of the Circuit Court of the First Circuit.

————— [7]

[Title of Supreme Court and Cause.]

MOTION TO STRIKE AND QUASH
WRIT OF ERROR

Comes now the above-mentioned Defendant in
error in this Court and the Plaintiff in the Court
below, by Shiro Kashiwa, his attorney, appearing
specially only for the purposes of this motion, and
hereby moves to have the Writ of Error issued on
October 27, 1948, in the above-entitled cause by
this Court stricken, quashed and declared null and
void in that at the time or prior to the filing of
the application for a writ of error and at the time
or prior to the issuance of the writ of error no
bond of any nature whatsoever in any shape or
form was filed with the clerk of this Court in favor
of the movant conditioned for the payment of the

judgment entered in the Circuit Court of the First Judicial Circuit in the sum of \$9,712.70 in case of failure to sustain the writ of error, all as provided for in Section 9557 of the Revised Laws of Hawaii 1945. [9]

This motion is based upon the records of this cause and upon the affidavit of movant's attorney, Shiro Kashiwa, attached hereto and hereby made a part hereof.

Dated at Honolulu, T. H., this 28th day of October, A. D. 1948.

STANLEY NICHOLSON, a minor, by EDWARD J. NICHOLSON, next friend and guardian ad litem,

Plaintiff-Defendant in error,

By /s/ SHIRO KASHIWA,
His Attorney. [10]

AFFIDAVIT

Territory of Hawaii,
City and County of Honolulu—ss.

Shiro Kashiwa, being first duly sworn, on oath deposes and says: That he is the attorney for the movant in the motion attached hereto; that he handled the entire case from the beginning to the end in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, and knows of his own knowledge that a judgment was entered in favor of the movant and against the Filipino Federation of America in the total sum of

\$9,712.70; and that the attached certified copy of the judgment is a true and correct copy of the judgment entered in said cause in the court below aforementioned.

/s/ SHIRO KASHIWA.

Subscribed and sworn to before me this 28th day of October A. D. 1948.

(Seal) /s/ FLORENCE Y. OKUBO,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires August 9, 1951.

[Endorsed]: Filed Oct. 28, 1948. [11]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii

L. No. 16344

STANLEY NICHOLSON, a minor, by EDWARD
J. NICHOLSON, next friend and guardian ad
litem,

Plaintiff,

vs.

FILIPINO FEDERATION OF AMERICA, IN-
CORPORATED, a foreign corporation, doing
business in the Territory of Hawaii,

Defendant.

JUDGMENT

Pursuant to the decision of the above-entitled
Court rendered and filed on July 13, 1948,

It Is Hereby Ordered, Adjudged and Decreed
that the Plaintiff do have and recover from the

Defendant the sum of Nine Thousand Six Hundred Twelve and 70/100 Dollars (\$9,612.70) together with the sum of \$100.00, allowed as costs to the Plaintiff, or a total of \$9,712.70.

Dated at Honolulu, T. H., July 29, 1948.

(Seal) GEORGE KAHOWAI,
Clerk, Circuit Court of First Judicial Circuit,
Territory of Hawaii.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

/s/ W. H. TILLEY,
Clerk, Circuit Court, First Circuit, Territory of
Hawaii.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office, in full force and effect this 28th day of Oct., 1948.

(Seal) /s/ W. H. TILLEY,
Clerk, Circuit Court, First Circuit, Territory of
Hawaii.

[Endorsed]: Filed July 29, 1948. [13]

[Title of Supreme Court and Cause.]

ORDER QUASHING WRIT OF ERROR

The motion of the Defendant-in-error herein to quash the writ of error issued by this Court in the above-entitled cause having been heard by this Court on the date hereof, the Defendant-in-error being represented before this Court by his attorney,

Shiro Kashiwa, and the Plaintiff-in-error being represented before this Court by its attorney, Arthur K. Trask,

It Is Hereby Ordered and Adjudged that the aforementioned motion be and is hereby granted and that the writ of error issued by this Court in the above-entitled cause be and is hereby quashed.

Dated at Honolulu, T. H., this 3rd day of November, A. D. 1948.

(Seal) /s/ S. B. KEMP,
Chief Justice of the Supreme Court of the Territory of Hawaii.

[Endorsed]: Filed Nov. 3, 1948. [15]

[Title of Supreme Court and Cause.]

PETITION FOR REHEARING

To the Honorable Supreme Court of the Territory of Hawaii:

Comes now Filipino Federation of America, Incorporated, a foreign corporation doing business in the Territory of Hawaii, Defendant-Plaintiff in Error above named, by Arthur K. Trask, its attorney, and respectfully petitions for a rehearing of said cause, and for vacation of the Order Quashing Writ of Error herein, on the following grounds:

I.

That this Honorable Court in ordering the Writ of Error quashed on the 3rd day of November, 1948, failed to consider the repealing effect of Section 4, Act 19, Session Laws of Hawaii, 1939:

“Section 4. Wherever provision is made in the Revised Laws of Hawaii 1935, as amended, for the filing of any bond or the deposit of cash in lieu of bond to cover costs on appeal to the circuit court or on writ of error, exceptions or appeal to the supreme court, such provision is hereby repealed.”

II.

That the aforesaid Section 4, Act 19, Session Laws 1939, amongst other things deleted the requirement of Section 3556, Revised Laws of Hawaii, 1935, for the filing of a bond where there is a money judgment as well as the filing of a bond for costs, which this Honorable Court construed in *Kuapuhi vs. Pa*, 31 Haw. 623, as being synonymous with a money judgment; and that Section 3556, Revised Laws of Hawaii, 1935, now appears as Section 9557, Revised Laws of Hawaii, 1945; and that in the citation thereto, there appears the aforesaid act 19, Session Laws of Hawaii, 1939.

III.

That the purpose of an appeal bond is to provide security for the adverse party; and that no other purpose is apparent; that the statute is remedial:

In re Watkins 41-A (2nd) 180, and *Clark v. Bank of Hennessey*, 14 Okl 572; *Arnold v. Brook's Estate*, 36 Vt 204.

IV.

That the policy of our law as evidenced by statutory provisions on the subject is to allow appeals from final judgments to the end that the losing party may have a review of alleged errors com-

mitted to his prejudice by the trial court; that it was the legislative intent that the ends of justice would be best subserved by having in mind this salutary purpose. “* * * and appeal being the creature of the statute, the object to be subserved being to get at the very right of the cause, statutes pertaining to procedure are entitled to a liberal construction, and courts should not be prone to plant thorns in the path of appeal.” *Stid v. Mo. Pac. Ry. Co.*, 211 Mo. 411, 418, 109 S. W. 663, 665. Furthermore, in *Hurley v. Universal Clay Co.*, 278 Mo. [18] 408, this doctrine was well expressed that the right to an appeal, though purely statutory, is remedial, and, therefore, to be liberally construed, in which case the aforesaid *Stid* case was cited. Also in accord, *Tooker v. Mo. Power and Light Company*, 80 S. W. (2d) 691.

V.

That this Honorable Court, in entering its Order quashing the Writ of Error herein, overlooked the well-established rule of statutory construction set forth in the following cases:

“Where a law is plain and unambiguous, the legislature must be intended to mean what has been plainly expressed and nothing remains to give the intent effect. The Court cannot look beyond the words used by the Legislature in construing an enactment when the meaning of the enactment is plain and intelligible.”

Castle & Cooke v. Luce, 5 Haw. 321.

“A law which is clear and unambiguous and the application of which in its literal terms results in no peculiar hardship or absurdity requires no con-

struction or interpretation, and all that the Court can do in such cases is to declare the law to be as it is without undertaking to modify its terms.”

Ex parte Higuchi, 17 Haw. 428.

“Statutes should be so construed as the plain sense of their language imports when that sense is plain, and when they are obscure and ambiguous, such a construction as will be consonant with the real intention of the lawmakers, with reason, justice, and good discretion, should be adopted * * *. Remedial statutes should receive an equitable interpretation whereby the letter of the statute is sometimes restrained and sometimes enlarged so as more effectually to meet the beneficial end in view and prevent a failure of the remedy.”

Shillaber v. Waldo, 1 Haw. 21 (31).

Wherefore, petitioner prays that a rehearing be had herein and that this Honorable Court do thereupon vacate the Order to Quash the Writ of Error on file herein.

Dated at Honolulu, T. H., this 8th day of November, 1948.

Respectfully submitted, [19]

FILIPINO FEDERATION OF AMERICA, INCORPORATED, Defendant-Plaintiff in error,

By /s/ A. K. TRASK,
Its Attorney.

CERTIFICATE

This is to certify that I, Arthur K. Trask, have examined the record and the authorities hereinabove cited, and that I am convinced that my client,

Filipino Federation of America, Incorporated, has a good and meritorious cause for suing out this Petition for Rehearing, under Rule 5 of the rules of the Supreme Court of the Territory of Hawaii, and that this rehearing is not sought for the purposes of delay.

/s/ A. K. TRASK.

[Endorsed]: Filed Nov. 9, 1948. [20]

[Title of Supreme Court and Cause.]

CERTIFICATE OF ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of a copy of the Petition for Rehearing in the above-entitled Court and cause, this 9th day of November, A. D. 1948.

Dated at Honolulu, T. H., this 9th day of November, 1948.

STANLEY NICHOLSON, a minor, by EDWARD
J. NICHOLSON, next friend and guardian ad
litem, Plaintiff-Defendant in error,
By /s/ SHIRO KASHIWA,
His Attorney.

[Endorsed]: Filed Nov. 9, 1948. [22]

[Title of Supreme Court and Cause.]

Petition for Rehearing.

Filed November 9, 1948.

Decided November 19, 1948.

Kemp, C. J., Le Baron, J., and Circuit Judge
Buck in place of Peters, J., absent.

DECISION

Per Curiam. The plaintiff in error, the defendant below, in the above-entitled matter, did not comply with the provision in section 9557, Revised Laws of Hawaii 1945, which requires that plaintiff in error, as a condition precedent to the issuance of a writ of error, file with the clerk a bond in favor of the prevailing party conditioned for the payment of the judgment in the original cause in case of failure to sustain the writ of error.

The defendant in error moved that the writ be quashed for the failure of the plaintiff in error to file the bond required by the statute. The judgment of the circuit court, which plaintiff in error sought to have reversed, is a judgment in favor of the plaintiff in a suit for damages for personal injuries suffered in an automobile accident. There was and is no claim that the judgment against the plaintiff in error is not [24] a money judgment. The motion to quash the writ was not resisted. We sustain the motion and quashed the writ.

The plaintiff in error now petitions for a rehearing of the motion to quash, and asserts that the court overlooked section 4 of Act 19 of Session Laws of Hawaii 1939, which he thinks repealed that provision in section 3556 of the Revised Laws of Hawaii 1935, which required a bond in favor of the prevailing party, conditioned for the payment of the judgment and which has been retained in the Revised Laws of Hawaii 1945 as section 9557, which reads in part as follows:

“No writ of error shall issue until the sum provided by section 9746 has been deposited to cover costs, and, except in criminal cases and cases in which there is no money judgment, a bond has been filed with the clerk, in favor of the prevailing party in the proceeding in which the error is alleged to have occurred, or his personal representatives, conditioned for the payment of the judgment in the original cause in case of failure to sustain the writ of error.”

The 1939 statute referred to amended section 3556, *supra*, but did not repeal the provision requiring a bond to pay the judgment. It did repeal a provision for the filing of a bond or the deposit of cash in lieu thereof to cover costs on writ of error, exceptions or appeal, to the supreme court. The 1939 statute did not, therefore, justify the failure to file the bond required by section 9557, *supra*.

Under the circumstances this court did not acquire jurisdiction of the cause. (W. Au Hoy v. Ching Mun Shee, 33 Haw. 239; Akana v. Espinda, 33 Haw. 314; Marks v. Waiahole Water Co., 36 Haw. 188.)

The petition is denied without argument under the rule.

A. K. Trask for the petition.

Approved:

/s/ S. B. KEMP,
Chief Justice.

/s/ LOUIS LE BARON,
Associate Justice.

/s/ CARRICK H. BUCK,
Circuit Judge.

By the Court:

(Seal) /s/ LEOTI V. KRONE,
Clerk.

[Endorsed]: Filed Nov. 19, 1948. [26]

[Title of Supreme Court and Cause.]

JUDGMENT ON DECISIONS, QUASHING
WRIT OF ERROR, AND DENYING PETI-
TION FOR REHEARING

Pursuant to the decision and opinion of the Court in the above-entitled cause, made and entered on the 10th day of November, 1948, quashing the Writ of Error issued herein on the 27th day of October, 1948, and the decision and opinion of the Court entered on the 19th day of November, 1948, denying the petition for a rehearing on the Motion to Quash the Writ of Error,

It Is Hereby Ordered and Adjudged that the Writ of Error be quashed because of the failure of plaintiff in error to file the bond required by Section 9557, Revised Laws of Hawaii 1945, and

It Is Hereby Further Ordered and Adjudged that the Petition for a Rehearing on the Motion to Quash the Writ of Error be denied.

Dated at Honolulu, T. H., this 27th day of November, 1948.

By the Court:

(Seal) /s/ LEOTI V. KRONE,
 Clerk.

Approved:

 /s/ S. B. KEMP,
 Chief Justice.

[Endorsed]: Filed Nov. 27, 1948. [28]

[Title of Supreme Court and Cause.]

CERTIFICATE OF ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of copies of the Judgment and Notice of Judgment in the above-entitled matter.

Dated at Honolulu, T. H., this 29th day of November, 1948.

STANLEY NICHOLSON, a minor, by EDWARD J. NICHOLSON, next friend and guardian ad litem, Plaintiff, Defendant in Error,

By /s/ SHIRO KASHIWA,
His Attorney.

[Endorsed]: Filed Nov. 30, 1948. [30]

[Title of Supreme Court and Cause.]

PETITION FOR APPEAL

To The Honorable Supreme Court of the Territory of Hawaii:

Comes now Filipino Federation of America, Incorporated, a foreign corporation doing business in the Territory of Hawaii, defendant-plaintiff in error above-named and petitioner herein, and deeming itself aggrieved by the Judgment of the Supreme Court of the Territory of Hawaii, made and entered on the 27th day of November, 1948, quashing the Writ of Error heretofore issued herein, denying the petition for rehearing heretofore filed herein, for the reasons and grounds specified in the

Assignment of Errors filed herein, and do pray that this appeal may be allowed; that the Court do stay further proceedings in this cause pending the determination of the issues raised on said appeal; that the Court do set the amount of the penalty in the appeal bond, a copy of which is filed herein; and

Petitioner does further pray that a transcript of the record and proceedings, more particularly set forth in [32] the praecipe filed herein, upon which the said Judgment was made, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that said Judgment may be reversed or otherwise corrected as to the said Circuit Court of Appeals may by the premises seem just and equitable.

Dated at Honolulu, T. H., this 11th day of December, 1948.

FILIPINO FEDERATION OF AMERICA, INCORPORATED, a foreign corporation doing business in the Territory of Hawaii, (plaintiff-in-error) Petitioner,

By ARTHUR K. TRASK,

Its Attorney.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., Dec. 11th, A. D. 1948.

(Seal) /s/ LEOTI V. KRONE,

Clerk, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed Dec. 11, 1948. [33]

[Title of Supreme Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now Filipino Federation of America, Incorporated, defendant, plaintiff in error above-named, by Arthur K. Trask, its attorney, and files the following Assignment of Errors, upon which it will rely in the prosecution of its appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment entered herein on the 27th day of November, 1948, quashing the Writ of Error heretofore issued herein, and denying the Petition for Rehearing, heretofore filed herein.

I.

That the Supreme Court of the Territory of Hawaii erred in entering Judgment quashing the writ of error heretofore issued by the above-entitled Court. Although the Order Quashing the Writ of Error does not, in terms, set forth the grounds for such Order, it must, by implication, be found that the Court based its Order on the grounds set forth in the Motion to Strike and Quash Writ of Error, filed October 28, [35] 1948, to-wit:

“* * * that at the time or prior to the filing of the application for a writ of error and at the time or prior to the issuance of the writ of error no bond of any nature whatsoever in any shape or form was filed with the clerk of this Court in favor of the movant conditioned for the payment of the judgment entered in the Circuit Court of the First Judicial Circuit in

the sum of \$9,712.70 in case of failure to sustain the writ of error, all as provided for in Section 9557 of the Revised Laws of Hawaii 1945," and

that the error of the Supreme Court of the Territory of Hawaii, as alleged in this Assignment, consists in the failure of the Supreme Court to find that the purpose of an appeal bond is to provide security for the adverse party and that the requirement of an appeal bond is not jurisdictional.

II.

That the Supreme Court of the Territory of Hawaii erred in entering judgment quashing the writ of error and denying the Petition for Rehearing because of failure to file an appeal bond prior to the issuance of the Writ of Error herein because Section 9557, Revised Laws of Hawaii 1945, is remedial legislation and compliance therewith is not a condition precedent to the prosecution of said Writ of Error.

III.

That the Supreme Court of the Territory of Hawaii erred in entering judgment quashing the writ of error and denying the Petition for Rehearing because of failure to file an appeal bond prior to the issuance of the Writ of Error herein because such actions operated to deprive the defendant, plaintiff in error, from having a review of alleged errors committed to its prejudice by the trial court.

IV.

That the Supreme Court of the Territory of Hawaii erred in entering judgment quashing the writ of error and [36] denying the petition for rehearing because of failure to file an appeal bond prior to the issuance of the Writ of Error herein because Section 9557, Revised Laws of Hawaii 1945, is a statute pertaining to procedure and should be liberally construed.

V.

That the Supreme Court of the Territory of Hawaii erred in entering judgment Quashing the Writ of Error and denying the petition for rehearing because of failure to file an appeal bond prior to the issuance of the Writ of Error herein because the requirement of an appeal bond was deleted by the legislature of the Territory of Hawaii by virtue of the enactment of Act 19, Session Laws of Hawaii 1939, Section 4 of which Act reads as follows:

“Section 4. Wherever provision is made in the Revised Laws of Hawaii 1935, as amended, for the filing of any bond or the deposit of cash in lieu of bond to cover costs on appeal to the Circuit or on writ of error exceptions or appeal to the supreme court, such provision is repealed.”

And that Section 9557, Revised Laws of Hawaii 1945, which section requires an appeal bond, is a restatement of Section 3556, Revised Laws of Hawaii 1935, is ambiguous inasmuch as the afore-said Act 19, Session Laws of Hawaii 1939, is cited as an amendment incorporated therein.

VI.

That the Supreme Court of the Territory of Hawaii erred in entering Judgment quashing the Writ of Error and denying the Petition for Rehearing because of failure to file an appeal bond prior to the issuance of the Writ of Error herein because the effect thereof was to take property of defendant, plaintiff in error, without due process of law and without affording him an opportunity to have alleged errors committed to his prejudice in the trial court subjected to appellate review, all in violation of the Fifth and Fourteenth Amendments of the United States Constitution. [37]

VII.

That the Supreme Court of the Territory of Hawaii erred in entering judgment quashing the Writ of Error and denying the Petition for Rehearing because of failure to file an appeal bond prior to the issuance of the Writ of Error herein on the following grounds:

In construing the meaning of money judgment in Section 2529, Revised Laws of Hawaii 1925, (now Section 9557, Revised Laws of Hawaii 1945), it was held by the Supreme Court of the Territory of Hawaii in *Edward Kuapuhi, also known as E. J. Kuapuhi, and Keakaku (W) v. Catherine K. Pa and McBryde Sugar Company, Limited*, 31 Hawaii 623, that a judgment for costs is a money judgment. The Supreme Court of the Territory of Hawaii, incorporated in its *Per Curiam* denying the Petition for Rehearing, dated November 19, 1948, and

upon which Per Curiam Decision the Judgment of the Supreme Court appealed from herein is based, the following language:

“* * * The 1939 statute (meaning Act 19, Session Laws of Hawaii 1939. See Assignment V supra) referred to amended section 3556, supra, (Revised Laws of Hawaii 1935, formerly Revised Laws of Hawaii 1925, Section 2529, and now Revised Laws of Hawaii 1945, Section 9557) but did not repeal the provision requiring a bond to pay the judgment. It did repeal a provision for the filing of a bond or the deposit of cash in lieu thereof to cover costs on writ of error, exceptions or appeal, to the supreme court. The 1939 statute did not, therefore, justify the failure to file the bond required by section 9557, supra. Under the circumstances this court did not acquire jurisdiction of the cause.”

In view of the decision of the Supreme Court heretofore referred to in 31 Hawaii 623, coupled with the fact that the costs were merged in the judgment of the Circuit Court from which the Writ of Error was issued by the Supreme Court, the provision of Section 4, Act 19, Session Laws of Hawaii 1939, dispensed [38] with the filing of any bond or the deposit of cash in lieu of bond to cover costs on appeal, under the limited interpretation given said Section 4, Act 19, Session Laws of Hawaii 1939, by the Supreme Court of the Territory of Hawaii in the aforesaid Per Curiam decision; and it follows that the entirety of the Circuit Court Judgment was non separable for appellate review procedure. So, if as the Supreme

Court rules in the said Per Curiam Decision a bond is not required for costs—a judgment for costs being a money judgment—no appeal bond was necessary for the Supreme Court to acquire jurisdiction and for the issuance of the Writ of Error to bring up the Circuit Court judgment in its entirety for appellate review.

Wherefore, defendant, plaintiff in error, prays that because of the errors hereinabove assigned, the Judgment entered herein on the 27th day of November, 1948, quashing the writ of error and denying the petition for rehearing, be vacated, reversed and corrected.

Dated at Honolulu, T. H., this 11th day of December, 1948.

FILIPINO FEDERATION OF AMERICA, INCORPORATED, Defendant, Plaintiff in Error,

By /s/ ARTHUR K. TRASK,
Its Attorney.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated, at Honolulu, T. H., Dec. 11th, A. D. 1948.

(Seal) /s/ LEOTI V. KRONE,
Clerk, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed Dec. 11, 1948. [39]

[Title of Supreme Court and Cause.]

NOTICE OF APPEAL

To Stanley Nicholson, a minor, by Edward J. Nicholson, next friend and guardian ad litem, plaintiff-defendant in error above named, and Shiro Kashiwa, Esq., his attorney:

You and each of you are hereby notified that an appeal has been taken from the Judgment entered herein on the 27th day of November, 1948, quashing the Writ of Error heretofore issued herein, denying the Petition for a Rehearing heretofore filed herein.

Dated at Honolulu, T. H., this 11th day of December, 1948.

FILIPINO FEDERATION OF AMERICA, INCORPORATED, Defendant-Plaintiff in error,

By /s/ ARTHUR K. TRASK,
Its Attorney.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., Dec. 11, A. D. 1948.

(Seal) /s/ LEOTI V. KRONE,
Clerk, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed Dec. 11, 1948. [41]

[Title of Supreme Court and Cause.]

BOND

Know All Men By These Presents, that the Filipino Federation of America, Incorporated, a foreign corporation doing business in the Territory of Hawaii, as Principal, and Pedro B. Valdez and Robert E. Cruz, both of Honolulu, City and County of Honolulu, Territory of Hawaii, as Sureties, jointly and severally are held, firmly bound, and indebted to the United States of America in the sum of Two Hundred Fifty (\$250.00) Dollars to be levied on our goods, chattels, lands and tenements, upon this condition:

Whereas, the Filipino Federation of America, Incorporated, principal, has taken an appeal, as plaintiff in error, from the Supreme Court of the Territory of Hawaii to the United States Court of Appeals for the Ninth Circuit, to reverse the judgment dated and entered in said cause on the 27th day of November, 1948, quashing the Writ of Error heretofore issued herein and denying the Petition for Rehearing, [43]

Now, Therefore, if the above bounden principal, plaintiff in error, shall prosecute its appeal without delay and answer for and pay all costs if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

In Witness Whereof, the parties hereto have

hereunto set their hands and seals this 8th day of December, A. D. 1948.

FILIPINO FEDERATION OF AMERICA, INCORPORATED, Principal,

By /s/ BENIGO O. ESCOBIDO,
Its Executive Chairman.

By /s/ ANGEL BACLAGAN,
Its Secretary.

(Seal) /s/ PEDRO B. VALDEZ,
Surety.

(Seal) /s/ ROBERT E. CRUZ,
Surety.

Territory of Hawaii,
City and County of Honolulu—ss.

And sureties in the within bond do severally solemnly swear that they have property situated within the Territory of Hawaii subject to execution and are worth in property within said Territory the amount of the penalty specified herein over and above all their debts and liabilities. [44]

/s/ PEDRO B. VALDEZ.

/s/ ROBERT E. CRUZ.

Subscribed and sworn to before me this 8th day of December, A. D. 1948.

(Seal) /s/ TAI QUAN CHING,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1949.

The foregoing bond is approved as to amount and sufficiency of sureties.

(Seal) /s/ SAMUEL B. KEMP,
 Chief Justice.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., Dec. 11th, A. D. 1948.

(Seal) /s/ LEOTI V. KRONE,
 Clerk, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed Dec. 11, 1948. [45]

[Title of Supreme Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above-Entitled Court:

You will please prepare the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and include in said record the following pleadings, proceedings and papers on file, to-wit:

1. Judgment in Law No. 16344 in the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

2. Writ of Error in case No. 2741 in the Supreme Court of the Territory of Hawaii.

3. Motion to Strike and Quash Writ of Error and Affidavit in case No. 2741 in the Supreme Court of the Territory of Hawaii.

4. Order Quashing Writ of Error in case No. 2741 in the Supreme Court of the Territory of Hawaii.

5. Petition for Re-Hearing in case No. 2741 in the [47] Supreme Court of the Territory of Hawaii.

6. Decision Denying Petition for Rehearing in case No. 2741 in the Supreme Court of the Territory of Hawaii.

7. Judgment in No. 2741, in the Supreme Court of the Territory of Hawaii, entered on the 27th day of November, 1948.

8. Certificate of Acknowledgment of Receipt of Judgment filed on the 30th day of November, 1948 in No. 2741, in the Supreme Court of the Territory of Hawaii.

9. Praecipe.

Said record to be prepared as required by law, and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the Clerk of the said Circuit Court of Appeals at San Francisco, in the State of California, before the period fixed by law for filing the record on appeal.

Dated at Honolulu, T. H., this 11th day of December, 1948.

FILIPINO FEDERATION OF AMERICA, INCORPORATED, Defendant-Plaintiff in Error,

By /s/ ARTHUR K. TRASK,
Its Attorney.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the

office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., Dec. 11th, A. D. 1948.

(Seal) /s/ LEOTI V. KRONE,
Clerk, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed Dec. 11, 1948. [48]

[Title of Supreme Court and Cause.]

ORDER ALLOWING APPEAL

Upon filing by the Defendant-Plaintiff in error, Filipino Federation of America, Incorporated, of a bond in the sum of \$250.00, with good and sufficient sureties, the appeal in the above-entitled cause is hereby allowed.

Dated at Honolulu, T. H., this 11th day of December, 1948.

(Seal) /s/ SAMUEL B. KEMP,
Chief Justice.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., Dec. 11th, A. D. 1948.

(Seal) /s/ LEOTI V. KRONE,
Clerk, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed Dec. 11, 1948. [50]

[Title of Supreme Court and Cause.]

CITATION ON APPEAL

The United States of America—ss.

The President of the United States of America
To Stanley Nicholson, minor, by Edward J. Nicholson, next friend and guardian ad litem, and to Shiro Kashiwa, his attorney:

You are hereby cited and admonished to be and appear at the Ninth Circuit, to be held at the City and County of San Francisco, State of California, within thirty (30) days from the date of this writ, pursuant to an order allowing appeal, filed in the office of the Clerk of the Supreme Court of the Territory of Hawaii, wherein Filipino Federation of America, Incorporated, is the Defendant-Plaintiff in error and you are the Plaintiff-Defendant in error, to show cause, if any you have, why the Judgment in such appeal mentioned, should not be corrected and reversed, and speedy justice should not be done to the parties herein.

Witness, the Honorable Carl Vinson, Chief Justice [52] of the Supreme Court of the United States of America, this 11th day of December, 1948, and of the Independence of the United States 171st.

/s/ SAMUEL B. KEMP,
Chief Justice.

Attest:

(Seal) /s/ LEOTI V. KRONE,
Clerk of the Supreme Court of the Territory of Hawaii.

Let the within citation issue:

/s/ SAMUEL B. KEMP,
Chief Justice.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

(Seal) /s/ LEOTI V. KRONE,
Clerk, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed Dec. 11, 1948. [53]

[Title of Supreme Court and Cause.]

SUPREME COURT CLERK'S CERTIFICATE

I, Leoti V. Krone, clerk of the supreme court of the Territory of Hawaii, do hereby certify that the foregoing documents, attached hereto and listed in the index herein, are full, true, and correct copies of the originals on file in the above-entitled court and cause.

I further certify that the cost of the foregoing transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit is \$51.50, and that said amount has been paid by the attorney for the appellant (plaintiff in error).

In Witness Whereof, I have hereunto set my hand and affixed the seal of the supreme court of the Territory of Hawaii at Honolulu, this 5th day of January, 1949.

/s/ LEOTI V. KRONE,
Clerk. [54]

[Endorsed]: No. 12155. United States Court of Appeals for the Ninth Circuit. Filipino Federation of America, Incorporated, Appellant, vs. Stanley Nicholson, a minor, by Edward J. Nicholson, next friend and guardian ad litem, Appellee. Transcript of Record. Appeal from the Supreme Court for the Territory of Hawaii.

Filed January 17, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the Supreme Court of the Territory of Hawaii,
October Term, 1948.

No. 12155

STANLEY NICHOLSON, a minor, by Edward J. Nicholson, next friend and guardian ad litem,
Plaintiff-Defendant in Error,
vs.

FILIPINO FEDERATION OF AMERICA, INCORPORATED, a foreign corporation, doing business in the Territory of Hawaii,
Defendant-Plaintiff in Error.

STATEMENT OF POINTS AND
DESIGNATION OF PARTS OF RECORD

Comes now Filipino Federation of America, Incorporated, a foreign corporation, doing business in the Territory of Hawaii, appellant herein, by

his attorney, Arthur K. Trask, and in compliance with subdivision 6 of rule 19 requiring a concise statement of the points on which appellant intends to rely on the appeal, hereby adopts as the points on appeal the assignment of errors appearing in the transcript of the record, and in compliance with the rules of this court pertaining to the designation of the portion of the record to be printed, directs that the entire record on appeal, as set forth in the praecipe heretofore filed with the clerk of the supreme court of the Territory of Hawaii, with the request that copies of the record as so designated be prepared and transmitted to this court, be printed as the record on review.

Dated Honolulu, T. H., January 8, 1949.

/s/ A. K. TRASK,

Attorney for plaintiff in error-appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed January 17, 1949. Paul P. O'Brien, Clerk.